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November 18, 1997

Via Certified Mail P497 682 396

Ms. Sarah Shirley
Chair, Opinions Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-1034 RECEIVED
NOV 20 1997

Opinion Committee

Re: Formal AG Opinion Request

FILE # M1-39923-97
I.D. # 39923

Dear Ms. Shirley:

I am writing on behalf of the Texas State Board of Plumbing Examiners to request a formal Attorney General's Opinion regarding the proper interpretation of Section 5B(b) of the Plumbing License Law, TEX. REV. CIV. STAT. ANN. Art. 6243-101 (Vernon 1997) and other related issues.

FIRST QUESTION

Does Section 5B taken as a whole mean that a city must adopt one of the three state approved codes in (a) but then may modify the standards within one of the three approved codes it has adopted so long as the modifications do not substantially vary with the standard contained in the code, *or* does Section 5B mean that a city can adopt any plumbing code it chooses so long as the code does not substantially vary with the rules or laws of this state?

DISCUSSION

Section 5B(a) of the Plumbing License Law states: To protect the health and safety of the citizens of this state the Board shall adopt the Southern Standard Plumbing Code*, the Uniform Plumbing Code, and the National Plumbing Code.

*The Southern Standard Plumbing Code is often referred to as the Standard Plumbing Code. However these are the same code.

Section 5B(b) of the Plumbing License Law states: In adopting plumbing standards for the proper design, installation and maintenance of a plumbing system, a municipality or an owner of a public water system may adopt standards that do not substantially vary with rules or laws of this state.

There has been much confusion over the language in 5B(b) regarding the adoption of standards. Many cities believe that the language in 5B(b) allows them to adopt any code they choose. However, the legislature specifically approved the three listed codes. If a city were able to adopt any code it chooses, it seems that the list mandated by the legislature would be useless. To follow this line of reasoning, one would also have to assume that *standard* is used interchangeably by the legislature with *code*. This does not appear to be the case as the legislature discussed the three *codes* to be approved in 5B(a) and discussed *standards* in 5B(b). We do not believe that a standard means a code. We believe a code to be a collection of standards.

SECOND QUESTION

Due to changes in the Plumbing License Law in 1993, is Attorney General Opinion No. MW-545 (1982) still good authority?

DISCUSSION

In Attorney General Opinion No. MW-545 (1982), the issue of whether the Texas State Board of Plumbing Examiners had authority to adopt plumbing codes with statewide applicability was examined. At that time, the Attorney General determined that the Board had no authority to regulate plumbing by adopting a plumbing code with statewide applicability. However, since that time the Plumbing License Law was changed to mandate the Board to adopt the three codes listed in 5B(a).

THIRD QUESTION

If one of the three approved codes listed in 5B(a) quits issuing a code and binds a different unapproved code under its name, is the new code still approved as one of the original three?

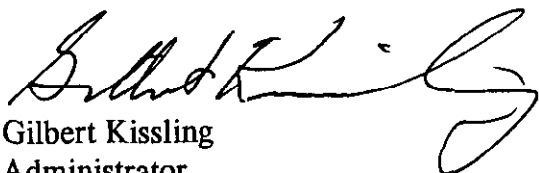
DISCUSSION

The three codes listed in 5B(a) were specifically reviewed and approved by the Legislature in 1993. These three codes are generally amended each year with a new code (a compilation of the amendments) issued once every three years by each of the codes. One of the three approved codes, the Southern Standard Plumbing Code, will not be reissuing its own code but instead will be issuing a different code, the International Plumbing Code, under the name and cover of the Southern Standard Plumbing Code. The International Plumbing Code is not the same code that was approved by the Legislature, nor is it an amendment of the Southern Standard Plumbing Code.

We are hopeful that you will be able to shed some light on these issues. Please don't hesitate to call me with any questions regarding this matter.

The Assistant Attorney General assigned to the Board is Tracy Gonzales-Schmidt. Her number is 475-4192.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert Kissling". The signature is fluid and cursive, with a large, stylized "G" at the beginning and a long, sweeping underline.

Gilbert Kissling
Administrator

Texas State Board of Plumbing Examiners